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14 November 1951

Memorandum for: Deputy Director (Administration)

From: Legislative Counsel

Subject: CIA Legislative Program, 1952.

1. This office is currently engaged in preparing the CIA legislative program for submission to the Second Session of the 82nd Congress. Your recommendations and guidance are requested as to whether provisions should be included for an increase in the salaries of the senior officials of the Agency. Some background data is set forth herewith, together with a copy of the Executive Pay Bill (P.L. 359 - 81st Cong.), which shows the salaries of the senior officials of the Government.

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Repeal of Sections 3 and 5 and Revision of Section 10(a)(2)
of the Central Intelligence Agency Act of 1949.

Section 3 of the CIA Act extends to the Agency authority in the performance of its functions to exercise certain authorities contained in the Armed Services Procurement Act of 1947. This includes the authority to negotiate contracts without advertising under certain conditions, authorizes the delegation of procurement responsibilities and carries other basic authorities in the procurement field. In the opinion of the procurement officials of CIA, it would be highly desirable to extend to CIA certain other authorities of the Armed Services Procurement Act which were not requested at the time that the CIA Act was passed on the basis that they were not needed at that time or in contemplation. This is particularly true of the right to negotiate contracts in the field of research and development, medical supplies, perishable subsistence supplies, and supplies purchased for authorized resale.

Section 5 of the CIA Act contains authorizations for travel, allowances and related expenses. After two years of administration under these provisions, at least one-third of the subsections of Section 5 require amendment by deletion or addition due to administrative experience, restrictions which have arisen in operations, and subsequent Congressional action. The Comptroller recommends the inclusion of the majority of these amendments as a result of problems which have arisen between his office and the operating branches in the administration of Section 5.

It is the opinion of the General Counsel's Office that Sections 3 and 5 of the CIA Act, which were originally intended as authorizations, have now in effect become limitations of a type not contemplated by the Congress when the CIA Act was passed. For this reason, it is recommended by the General Counsel's Office, and concurred in by the Comptroller and the Chief of Procurement, that consideration be given to repealing Sections 3 and 5 of the CIA Act. This would throw us back upon the broad authorities granted to us in Section 10(a)(2) of the CIA Act which authorizes us to expend appropriated funds for "supplies, equipment and personnel and contractual services otherwise authorized by law and regulations, when approved by the Director." The Comptroller General has reserved decision on whether Section 10(a)(2) as presently worded would be

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adequate to allow the Agency to adopt the authorities of other laws which it deems necessary. It is further recommended, therefore, that Section 10(a)(2) be amended to provide clearly the power to adopt such authorities. The preferable revision (with the new material underlined) would read as follows:

"Sec. 10(a) Notwithstanding any other provisions of law, sums made available to the Agency by appropriation or otherwise may be expended for purposes necessary to carry out its functions, including -- ...

"(2) supplies, equipment, personnel and contractual services and any other expenditures otherwise authorized by law and regulations, when approved by the Director."

If the Comptroller General will not give a satisfactory interpretation in line with the above suggestion, it is recommended that Section 10(a)(2) be revised completely to read as follows:

"(2) expenditures authorized by any other law upon determination by the Director that the provisions of such law or laws, and procedures thereunder adapted for necessary Agency purposes, are to be used by the Agency as a standard for such expenditures."

Adoption of such a section would serve to place CIA in the same situation regarding procurement matters, travel, allowances and related administrative expenditures, as it presently is in the personnel field because of our exemption from the Classification Act. Such authority would be highly preferable, and Legislative Counsel recommends in favor of its inclusion.

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20 November 1951

Memorandum for: Deputy Director (Administration)
From: Legislative Counsel
Subject: CIA Legislative Program, 1952.

1. The Assistant Deputy Director for Administration (General) has recommended the repeal of Section 9 of the Central Intelligence Agency Act of 1949 (P.L. 110 - 81st Congress, as amended by P.L. 697 - 81st Congress) for inclusion in the CIA legislative program for 1952. For the reasons set forth below, it is recommended that Section 9, as amended, be repealed.

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Arming of Couriers and Guards.

Section 6(d) of the Central Intelligence Agency Act of 1949 authorizes the Agency to allow couriers and guards designated by the Director to carry firearms when engaged in the transportation of confidential documents and materials affecting the national defense and security. This was designed to protect those who properly were armed in connection with their official duty from prosecution under state or local laws prohibiting possession of firearms without a license. For example, a courier going from Washington to Boston could not practically comply with the state licensing laws, particularly the Sullivan law in New York. Under our Act if he were picked up in New York his designation as an armed guard or courier by the Director would be a defense to prosecution.

Experience has shown the desirability of arming employees for other purposes, such as the protection of installations or of property, or the protection of defectors and other personnel connected with CIA operations who might well be subject to attack by subversive elements. The Assistant Deputy Director (Inspection & Security) has raised the question whether we need additional statutory protection for the latter categories and whether we can provide any protection by legislation to employees for injury or death caused by use of the firearms.

Legislative Counsel is of the opinion that it would be feasible to amend Section 6(d) to read:

"Authorize employees designated by the Director to carry firearms when engaged in transportation of confidential documents and materials affecting the national defense and security, or when necessary for the protection of the property, personnel and installations of the Agency."

In considering the submission of such an amendment to the Congress the following points should be noted. The General Counsel is of the opinion that the present authority would protect Agency employees in most and perhaps all situations presently contemplated, but that it would be desirable to have any doubts eliminated. The enlargement of the authority would raise the question of whether the

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Agency was not undertaking police powers, in contravention of the prohibition against exercise of such powers in the National Security Act of 1947. It might well also create comment both in the Congress and in the press that it was authority to create a Gestapo. The desirability of avoiding such questions and related publicity may outweigh the desirability of enlarging the authorization.

With reference to the other problem raised by the Assistant Deputy Director (Inspection & Security), it is the opinion of the General Counsel that there is no necessity for any attempt to provide special legislative protection for employees in the event of damage or death resulting from the use of firearms. If properly authorized to carry the firearms by designation of the Director, the employee is in the same position as policemen, FBI agents, Secret Service men, and others who must carry arms in the performance of their duty. If the arms are used in connection with their official duties and in a manner not beyond the requirements of the situation, the employees are protected by law. If they misuse the firearms, they are subject to prosecution under applicable laws, and no guarantees of protection could be obtained by legislation. This is a matter for instruction and discipline, and Legislative Counsel recommends against submission of any legislation on this second point.

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Exemption from the Performance Rating Act of 1950.

At the request of Assistant Director (Personnel) exemption is being sought for CIA from the Performance Rating Act of 1950 (P.L. 873 - 81st Congress). A similar request for exemption, based on security reasons, was also received from the previous Assistant Director/SO.

The Performance Rating Act of 1950 provides that each agency should establish a plan for performance ratings (commonly known as Efficiency Ratings) for evaluating the work performance of its employees. Each agency's performance rating plan must be approved by the Civil Service Commission.

Under the provisions of the Act, each agency is to set up a three-member board of review to hear appeals from employees dissatisfied with or contesting their efficiency ratings. One member of the board is to be designated by the employees of the agency; one member is to be designated by the head of the agency; and one member, who is to serve as chairman, is to be designated by the Civil Service Commission. As the Commission insists that the latter be a man from outside of the agency, and presumably a member of the Commission staff, it is unacceptable to CIA on a security basis. In addition, an employee who takes an appeal to this board may appear through a designated representative such as outside counsel or other non-CIA personnel. An employee presentation of evidence in his own behalf before the appeals board would probably include work samples, which is unacceptable from a security standpoint. In addition, the Civil Service Commission has the right to inspect the administration of the performance rating plan, and such inspection could include not only an examination of records but also employee interviews by Commission representatives regarding employee understanding of the rating plan and its standards.

At the time this Act was being originally considered, the question arose as to whether CIA should be exempted from its provisions. It was determined not to seek an exemption as there were indications that satisfactory agreements for working with its provisions, within our own security requirements, could be reached with the Civil Service Commission. Attempts to develop

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a satisfactory rating plan for CIA finally disclosed conflicts with the Civil Service Commission, as the latter felt it could not waive certain provisions of the Act as passed. Discussions with their Chief of Performance Ratings resulted in the expression of his views that the question of consideration of appeals probably was academic, and he appeared to suggest that there would be administrative means available to a security agency for discouraging or eliminating such appeals. However, no alternative could be found to fulfill the legal requirements for Commission inspection, and the negotiations thereupon fell through.

The CIA Career Service Committee has carefully considered this problem and has recommended to the Assistant Director (Personnel) that CIA seek an exemption from the Act. The Assistant Director (Personnel) has forwarded this recommendation with his favorable endorsement to this office under date of 9 October 1951 and has reiterated the need for legislative action in his memorandum to this office dated 16 November 1951.

Legislative Counsel is of the opinion that obtaining this exemption will present no problem.

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Indemnity for Copyright Infringement and Defamation.

There is some question as to whether a suit for copyright infringement may be maintained against the Government. However, such suits may be maintained against Government employees in their individual capacity for acts performed while serving in their governmental capacity.

There has been one federal court decision on this question and it points out that the position of the infringers as employees of the United States acting in the course of their official duties cannot protect them from the personal liability for damages. The court further pointed out that the immunity of the Government could not immunize its agents although in the particular case the acts were done for the benefit of the Government by the employees thereof.

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Similar problems exist in the field of libel and slander, and a similar solution is proposed to be included. Continuing problems in the field of libel arise in the publication of the [redacted] mary. It is felt that as long as the summary's distribution is limited within the Government for official purposes the statements contained therein are privileged and individual employees are not liable to suit. However, the summary is distributed to members of the press and university and public libraries which, in our opinion, places it beyond the pale of official use to an extent that the question of privilege is no longer present, and individual liability for libel and slander is present. [redacted]

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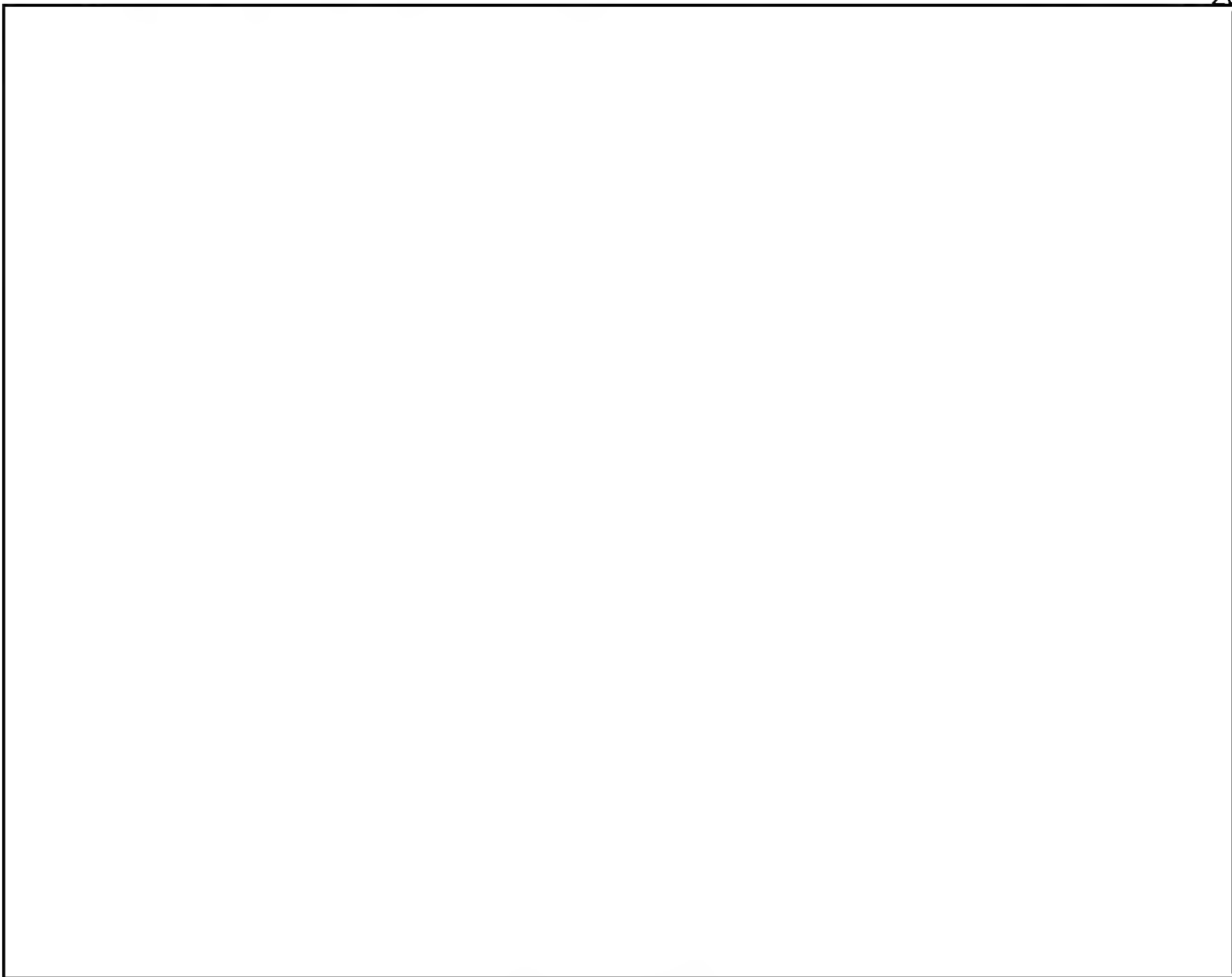
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Admission of Aliens to the U.S. for Permanent Residence.

The Acting Assistant Director for Operations has requested consideration be given to inclusion in the legislative program of a provision to grant immigration visas for permanent residence in the United States to aliens with eight or more years of service in the overseas The same type of request has been previously submitted by the Office of Special Operations. In justification it is stated that many aliens who serve us faithfully overseas hope in the end to receive what is to them the greatest possible reward, namely, American citizenship.

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the Army (under the Lodge Bill) after five or more years of honorable service, to be deemed lawfully admitted for permanent residence. However, attention is called to the fact that the civilian aliens whom it is desired to aid by this provision are in the same position as the many aliens who are employees of other departments of the Government overseas.

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Payment of Expenses to First Post of Duty.

The Comptroller requests consideration of the problem of authorizing the payment of the travel and transportation expenses of employees reporting to their first post of duty in the United States. The Assistant Director (Personnel) feels that this question would require additional review and study.

As a general Government practice, personnel are not paid the expenses of travel and transportation to their first post of duty in the United States on the theory that their presence at the post is a condition of employment. It is argued that payment of these costs would serve as an incentive to recruitment. However, this has been a controversial matter throughout Government and Legislative Counsel recommends great caution in considering its inclusion through exploration before any approach to the Congress is considered. It would be a request for special authorization for CIA without the showing of a necessity over and beyond certain other key agencies.

At the present time within CIA as well as within other Government agencies, an employee will occasionally be brought on duty and in a relatively short time thereafter a determination will be made that his services are needed in Washington This will then permit the United States Government to pay the cost of transporting both the employee and his belongings. While this is in effect a subterfuge, and if such a case could be proven the voucher would be suspended, it is often very difficult to prove the subterfuge. Since lack of authority to pay the costs encourages such subterfuges, it would appear to be beneficial to consider such practices at this time in connection with the legislative program.

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